IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4110 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Appellant(s)
Versus
GOPABHAI GABBABHAI & 1 - Defendant(s)

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Appearance :
MR YOGESH S LAKHANI for Appellant(s) : 1,
RULE SERVED BY DS for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 23/01/2007

ORAL JUDGMENT

1. The Gujarat State Road Transport Corporation has filed this appeal to challenge judgment and award made by the Motor Accident Claims Tribunal (Main), Bhavnagar in Motor Accident Claim Petition No. 215 of 1988 dated 10.06.1996. The Tribunal has awarded sum of

Rs.37,000/- by way of compensation to respondent No.1, who is original claimant, for the injuries sustained by him in a vehicular accident which took place on 5.2.1988 near Sihor Octroinaka at Sihor.

2. It is the case of respondent No.1 that, on the date of the accident, he was standing near his pan shop. It was around 1.00 O'clock in the night. At that time, respondent No.2-, i.e. driver of the bus belonging to the appellant bearing Registration No. GRU 8783, arrived from Bhavnagar side. It was driven in a rash and negligent manner and with great speed. It is his say that the bus dashed against him, as a result of which, he sustained serious injuries. He was initially removed to Sihor Hospital, but, later on, shifted to Sir T. Hospital, Bhavnagar. He has averred that, because of the accident, he sustained injuries on his left leg and had to remain in bed for a long time. As a part of treatment, an iron rod was inserted in his leg and he had to lie in the bed for considerably long period. He has, therefore, claimed compensation of Rs.50,000/-.

The appellant and respondent No.2 resisted the claim by filing written statement at Exh.7. Though they admitted the accident,they denied the negligence of respondent No.2. They have also denied that there was taxi parked on the wrong side of the road and when the bus passed by the taxi, the bumper of the bus touched the taxi. As a result of the same, it gained motion and caused injury to the claimant, i.e. respondent No.1.

During the hearing, the parties led evidence. On the basis of the same, the Tribunal held that the accident occurred solely due to the negligence of respondent No.2. It also held that the injuries caused to respondent No.1 was direct cause of the accident caused by the bus. The Tribunal assessed compensation at Rs.37,000/-and directed the appellant to satisfy the award. Hence, this appeal.

3. It is submitted by Mr. Y.S. Lakhani, learned advocate for the appellant, that there was no negligence on the part of respondent No.2 and the accident did not occur due to his negligence. He has further submitted that the compensation awarded to respondent No.1 was on the higher side. Respondent No.1, though served, is not present.

4. I have carefully considered the submissions made by Mr. Lakhani. I have also perused the record and proceedings of the case. So far as the fact that respondent No.1 received injuries in vehicular accident is concerned, it is not denied. It is also not denied that, at the relevant time, the offending bus was being driven by respondent No.2. The controversy is whether respondent No.2 was driving the vehicle in a negligence manner so as to cause accident. According to him, the accident occurred because there was wrong parking of the taxi and the bus dashed against the taxi and it was the taxi which caused injuries to respondent No.1. However, the evidence clearly shows that it was night time, i.e. 1.00 A.M. There was also almost blind curve at the

place where the shop of respondent No.1 was situated. In these circumstances, respondent No.2 ought to have exercised extra care and caution to avoid any accident occurring while he took the turn. Because of the lack of such care on his part, the accident occurred. I am, therefore, in total agreement with the findings of the Tribunal on the issue of negligence.

5. So far as the quantum of compensation is concerned, the Tribunal has taken into consideration the relevant factors and has arrived at a conclusion that for pain, shock and suffering, Rs.7,500/- could be awarded, for medical expenses, etc. Rs.7,500/- and for actual loss of income under each head, Rs.7,500/- could be awarded and for future economic loss, it held that Rs.14,500/- could be awarded. The relevant discussion is contained in para 8 of the judgment. I have perused the same. It appears that respondent No.1 was aged 25 years at the time of the accident. He was running pan shop and, according to him, he earned Rs.2,000/- to Rs.2,500/- per month. Because of the injury, for about six months, he could not carry on his business and was almost bedridden and an iron rod had to be inserted in his leg and in the opinion of the doctor, permanent partial disability in respect of the entire body was 5%. The Tribunal has considered his income at Rs.2,000/- per month and has applied multiplier of 12 years. It clearly appears that the amount determined by the Tribunal under each head is on a lower side. Even the multiplier applied by the Tribunal is very less. The Tribunal has assessed the prospective income of respondent No.1 at Rs.2,000/-

per month. In fact, according to him, even before the date of the accident, he was earning Rs.2,000/- to Rs.2,500/- per month. However, when Tribunal has assessed the income at Rs.2,000/- per month, it has not been challenged by respondent No.1. In the circumstances, even if his prospective income is taken at Rs.2,000/-, the loss of future income assessed by the Tribunal is on the lower side because of the less multiplier. But, as stated above, respondent No.1 has not challenged this finding. But, that would certainly restrain me from accepting the submissions of Mr. Lakhani that the compensation is on the higher side. It is, in my opinion, just compensation. No interference is required. Hence, this appeal has no merit and is dismissed.

Sd/-

(AKSHAY H. MEHTA, J.)

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